

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ADANI EXPORTS LIMITED,)	
)	
Plaintiff,)	2:05-cv-00304
v.)	
)	
AMCI (EXPORT) CORPORATION,)	
AMERICAN METALS & COAL)	
INTERNATIONAL INC., XCOAL)	
ENERGY AND RESOURCES, XCOAL)	
ENERGY AND RESOURCES, LLC,)	
K-M INVESTMENT CORPORATION,)	
ERNIE THRASHER, HANS J. MENDE,)	
and FRITZ R. KUNDRUN,)	
)	
Defendants.)	

AMENDED MEMORANDUM OPINION AND ORDER OF COURT

October 11, 2006

Presently before the Court for disposition is the MOTION TO DISMISS COUNT I OF THE AMENDED COMPLAINT, with brief in support, filed by Defendant Ernie Thrasher (“Thrasher”) (*Document Nos. 77 and 78*), and the Response of Adani Exports Limited (*Document No. 82*).

Count I of the Amended Complaint alleges breach of contract against “All Defendants.” However, by Plaintiff’s own admission, the Amended Complaint does not contain any allegations that Thrasher was a party to the contract at issue nor does the Amended Complaint contain any allegation(s) that Thrasher is the alter ego or successor of AMCI Export.

Accordingly, the Court finds that Count I of the Amended Complaint should be dismissed with prejudice as to Thrasher for failure to state a claim upon which relief may be granted. However, this ruling does not preclude Plaintiff from filing a Motion for Leave to Amend its

Complaint should discovery in the case reveal a basis for alleging that Thrasher is liable for AMCI Export's alleged breach of contract.

The Court notes that remaining against Defendant Thrasher is the allegation of civil conspiracy which is alleged in Count V of the Amended Complaint. Accordingly, Defendant Thrasher's Answer to the Amended Complaint shall be filed on or before October 21, 2006.

The Memorandum Opinion and Order filed on October 10, 2006 (*Document No. 85*) is hereby vacated.

So **ORDERED** this 11th day of October, 2006.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

cc:

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